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MEMO ENDORSED

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January 8, 2021

VIA ECF AND EMAIL

Honorable Katherine Polk Failla, U.S.D.J.

Southern District of New York

40 Foley Square, Room 2103

New York, NY 10007

Failla_NYSDChambers@nysd.uscourts.gov

Re: ***M3 Innovations Unlimited, Inc., et al. v. Ricatto***

Civil Action No. 1:18-cv-08404-KPF

Ricatto's Redacted and/or Withheld Documents for The Court's *In Camera* Review

Dear Judge Failla:

On behalf of Michael Ricatto ("Ricatto"), we respectfully submit this letter to this Honorable Court enclosing the documents that Your Honor ordered Ricatto to submit for Your Honor's *in camera* review in order to adjudicate the parties' motions. *See* Docket No. 83, December 23, 2020 Order.

As you may recall, Ricatto filed a Motion to Quash M3's Subpoenas on December 7, 2020 and filed a related Letter Opposition to M3's Motion to Compel Plaintiff/Counterclaim Defendant Michael Ricatto to produce unredacted copies of two documents, Bates-stamped RIC002585-2598 and RIC002599-2611, respectively, as well as Anthony Finno's engagement letter with his counsel. As outlined in Ricatto's December 7, 2020 Motion to Quash M3's Subpoenas, Ricatto maintains that these documents are privileged and have been properly redacted and/or withheld from production.

Please note that pursuant to Your Honor's instructions, Ricatto will file this letter on the public docket to demonstrate compliance with Your Honor's December 23, 2020 Order but will submit the above-referenced documents to Your Honor's Chambers for *in camera* review via email to the email address listed above.

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Thank you in advance for your thoughtful consideration of these matters.

Respectfully Submitted,

FLASTER/GREENBERG P.C.



Jeffrey A. Cohen

Enclosures

JAC/kaj

The Court has reviewed the documents Plaintiff has submitted to the Court for *in camera* review. (See Dkt. #83-84). After careful review, the Court concludes that the engagement letter at issue in Plaintiff's motion to quash: (i) contains no privileged information; (ii) is not work product; and (iii) is relevant to adjudicating Defendant's motion to compel. Accordingly, Plaintiff's motion to quash Defendant's subpoena directed to Anthony Finno is DENIED. Plaintiff shall produce the engagement letter on or by January 15, 2021. The Clerk of Court is directed to terminate the motion pending at docket entry 77.

Turning to Defendant's motion to compel, the Court is concerned that the putatively privileged documents pre-date Mr. Finno's engagement letter with counsel. Therefore, Plaintiff is hereby directed to file an *ex parte* submission explaining how the attorney-client privilege attaches to the disputed documents in light of the date of Mr. Finno's engagement letter with counsel. Plaintiff's supplemental *ex parte* submission shall be due on or by January 22, 2021. Plaintiff shall email the submission to Chambers using the following email address:
Failla_NYSDChambers@nysd.uscourts.gov.

Dated: January 12, 2021
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE